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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/821,509	03/29/2001	James J. Lu	065968.0144	5222
42532	7590	06/16/2005	EXAMINER	
PROSKAUER ROSE LLP ONE INTERNATIONAL PLACE 14TH FL BOSTON, MA 02110			TIEU, BENNY QUOC	
			ART UNIT	PAPER NUMBER
			2642	

DATE MAILED: 06/16/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/821,509

Applicant(s)

LU, JAMES J.

Examiner

Benny Q. Tieu

Art Unit

2642

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 16 March 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3,4,6-14,16-18 and 20-26 is/are rejected.
- 7) ☒ Claim(s) 2,5,15 and 19 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date: \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

2. Claims 1, 9-11, 14 and 22 are rejected under 35 U.S.C. 102(e) as being anticipated by Basso et al. (U.S. Patent No. 6,633,539).

Regarding claims 1, 14 and 22, Basso et al. teach a method of and system for call processing comprising:

receiving, at a soft-switch executing on computer, a plurality of calls for switching (column 4, lines 1-21);

Art Unit: 2642

monitoring least one criteria associated with operation of the computer (column 5, lines 1-23); and

based on the monitoring, limiting the number of calls processed the computer (column 5, lines 23-25).

Regarding claims 9-11, Basso et al. further teach the method wherein limiting the number calls processed by the computer comprises accepting no additional calls processed by the computer or wherein limiting the number calls processed by the computer comprises limiting the number of calls processed by the computer until the at least one criteria associated with operation of the computer reaches an acceptable level (column 5, lines 23-25).

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later

Art Unit: 2642

invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

5. Claims 3, 4,6-8, 12, 13, 16-18, 20, 21, 23-25 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Basso et al. (U.S. Patent No. 6,633,539).

Regarding claims 3, 4,6-8, 12, 13, 16-18, 20, 21, 23-25 and 26, Official Notice is taken that the method wherein the computer comprises a memory and the amount of usage of the memory is one criteria to be monitored and limiting the number of calls in response to determining amount of usage of processor exceeds approximately 90-95% of the amount of capacity the processor or limiting the number of calls processed the computer in response determining that the number of the plurality calls being processed by the computer exceeds approximately 50% of capacity of buffers of the soft-switch for processing calls, are all well known, or a design choice or lie fully under a normal capability of skilled person in the art at the time of invention was made. Although the amount of usage of the memory in a computer is not explicitly taught by Basso et al., it would have been obvious to one of ordinary skill in the art at the time the invention was made to have monitored the usage of the memory of the computer and prevent it exceeds a certain amount since it was known in the art that if the usage of the memory is 100%, the computer will be deadlock and unable to process any further information.

Art Unit: 2642

***Allowable Subject Matter***

6. Claims 2, 5, 15 and 19 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Response to Arguments***

7. Applicant's arguments with respect to claims 1-26 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Edwards et al. (U.S. Patent No. 6,650,748) teach a multiple call handling in a call center.

9. Any response to this action should be mailed to:

Commissioner of Patents and Trademarks

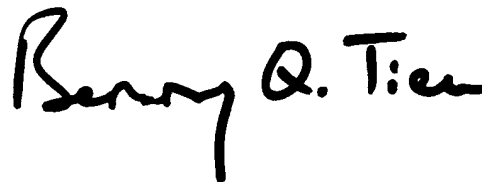
Washington, D.C. 20231

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Benny Q. Tieu whose telephone number is 571-272-7490. The examiner can normally be reached on Monday-Friday: 6:30AM - 5:00PM.

Art Unit: 2642

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ahmad Matar can be reached on 571-272-7488. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink that reads "Benny Q. Tieu". The signature is fluid and cursive, with the first name "Benny" and last name "Tieu" clearly legible, and "Q." in the middle.

Benny Q. Tieu  
Primary Examiner  
Art Unit 2642  
June 10, 2005